SUPREME COURT, U. S.

FILED

MAR 4 1968

JOHN F. DAVIS, CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1967

No. 174

CLYDE FRANKLIN LEE, ET AL., PETITIONERS,

vs.

FLORIDA.

ON WRIT OF CERTIORARI FROM THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

PETITION FOR CERTIORARI FILED MAY 19, 1967

CERTIORARI GRANTED JANUARY 15 1968

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Q. Deputy sheriff of what?

A. Orange County, Florida.

Q. At the time that you went there did you have anything in your possession?

A. Yes, sir; I had a state search warrant.

Q. Deputy Tanner, I have an article here that I would like you to examine if you would, sir?

A. (Witness complying.)

Q. Deputy Tanner, upon your examination of the article that I've just handed you are you able to identify it?

A. Yes, sir; this is a search warrant I had in my possession at 411 Manor Road.

MR. RUSS: Your Honor, at this time I request that the article be marked for Identification as Court' Exhbit Number Seven.

THE COURT: All right, mark it for Identification as Court's Exhibit Number Seven.

(The above instrument referred to was thereupon received by the Judge and marked as Court's Exhibit Number Seven for Identification.)

BY MR. RUSS:

Q. Deputy Tanner would you tell the jury what you did upon your arrival at the house at 411 Manor

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Q. Who was it sent to?

A. I don't recall.

Q. You don't remember?

A. Not for sure I don't.

Q. Well, let me ask you how many telephones does the sheriff's office put into houses of other people so they can listen in to conversations of other people?

MR. RUSS: Objection, Your Honor.

THE COURT: I am going to overrule it.

THE WITNESS: I don't know what name I used, Mr. Kirkland.

BY MR. KIRKLAND:

Q. You don't remember what name you used with them?

A. To get the service installed if I was the one that done it or if I just called, I don't remember, All I paid for or all the sheriff paid for was having a telephone installed at 211 Manor Road and for the installation charge and for nothing else.

Q. And in whose name was it installed?

A. I don't recall.

Q. Did you use an alias, Mr. Tanner?

A. I could have; yes, sir.

Q. And you don't remember?

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A. No, sir.

Q. Do you know who if anyone did rent it?

A. Who? No, sir.

Q. You were never present in it?

A. No, sir. I was not.

Q. Was the purpose of installing the telephone at 211 Manor Road to listen to conversation of a person other than persons who occupied 211 Manor Road?

MR. RUSS: Your Honor, I am going to object to that, there has been no testimony there has been a phone installed at 211 Manor Road to the knowledge of this witness, as I understand this witness said he never was in the house at 211 Manor Road.

THE COURT: He also testified he may have installed it. I am going to let him answer the question.

THE WITNESS: What was it again?

BY MR. KIRKLAND:

Q. Was the purpose of installing the phone at 211 Manor Road to eavedrop or listen in to the conversations of the party located at 411 Manor Road?

A. Well, again, assuming that I did, I could have but I don't know, I would say that that would be

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the purpose; yes, sir.

Q. In other words it was something more than coincidence that this line happened to be a line in a party line with 411 Manor Road?

A. Beg your pardon?

Q. It was something more than a coincidence that the line that was installed was something more than a coincidence with the party line at 411 Manor Road?

A. Yes, we didn't install it for the fun of it.

Q. Yes, for the purpose of listening in on the other party. Did you ever listen on the telephone?

A. No, sir.

Q. Is that out of the city of Orlando, Florida?

A. Yes, sir; I believe it is in Maitland.

Q. Let me just ask you this very briefly, as far as authority and all that is concerned did you authorize or direct a Mr. Horner of the Orlando Police Department to use that phone at 211 Manor Drive?

A. I ———

MR. RUSS: Just a minute, I am going to object until there has been some establishment as to the existence of the phone that he is making reference to.

MR. KIRKLAND: If the State will submit

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instrument and get a cheaper rate and it is easier on us, it is quicker, and it is easier for the people putting in a telephone.

Q. You say you have a work order, I have an exhibit marked State exhibit 21a for identification, would you examine it, please?

A. (Witness complying)

Q. Are you able to identify that article?

A. Yes, it is a service order.

Q. Which service order?

A. It is the service order I used the day that I installed the telephone I saw, it says it has got my initials and everything on it and it is my handwriting.

Q. Could you tell us exactly where it was when you hooked up the line to the pole?

A. By looking at this order I can tell it was worked out of the front of 410 cable, tier 751 showed up on binding post 9 in that particular terminal.

Q. Can you tell us as regards the installation that you made at that house on the 19th of July what type service you installed there?

A. By looking at this order I installed an R-4 line, that is a residence 4 line.

Q. What do you mean by a residence 4 line?

A. Well, if it was a business line it would be a B-4 for

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a business and a R is a residence phone, that is for home use.

Q. What does the 4 signify?

A. It is a party four line, there can be up to four people on it.

Q. It is possible to put four parties on that line?

A. Yes.

Q. At the time that you were at the house at 411 Manor Road with the man whom we have identified as Clyde Lee did you have any conversation with him concerning the service you were installing?

A. Well, I, it was early in the morning and I probably had very little conversation with him other than to tell him that it was a R-4 instead of an R-1 line.

MR. KIRKLAND: If the Court please, we object to that, the answer is yes or no. We object to any conversation.

THE COURT: Objection sustained. Just answer the question as asked.

BY MR. RUSS:

Q. Did you have a conversation with Mr. Lee at that time and place?

A. Yes.

Q. Tell the jury what you told Mr. Lee and what he told you?

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always tell them such, that they are on a four party line and there are not facilities for a private line.

Q. Did you tell this in this particular instance?

A. Yes, I do this all the time.

MR. KIRKLAND: I object as not being responsive. He said he tells that to all of them.

THE COURT: Objection sustained. Just answer the question.

BY MR. RUSS:

Q. Mr. Wheaton, what we would like to know, rather than talking about all your customers, we would like to know on July 19th at 411 Manor Road you told Mr. Lee he was on a four party line?

A. Yes.

MR. RUSS: Your Honor, at this time I would offer this installation record into evidence as 21a.

MR. KIRKLAND: As to the defendant Clyde Lee.

THE COURT: Are you offering it as to all the defendants or only as to the defendant Clyde Lee?

MR. RUSS: At this time only as to Lee, your Honor.

MR. KIRKLAND: May I inquire briefly?

(Whereupon Mr. Kirkland conducted voir dire examination.)

BY MR. KIRKLAND:

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Q. Mr. Wheaton you have a present recollection today of stating to Mr. Lee, of stating to Mr. Lee on July the —

A. It is on the top, July 19th.

Q. That you were installing at that address a four party line?

A. I have no tape or no record of this but I feel sure and I always do that, I have told him that he was on a four party line, I always tell them.

Q. How about in those cases you go there and the owner is not there, there is a maid, do you tell the maid?

A. I always tell the maid that is there.

Q. Do you recall on July 19th that you told Mr. Lee this on that date or do you assume that you did because you always tell everybody?

MR. RUSS: Judge, two questions there.

THE COURT: Objection overruled. Answer the question.

THE WITNESS: Well, there again I have no tape of this that I'm, I say that I told him you can say that I presume that I told him if you want.

BY MR. KIRKLAND:

Q. Is this why a party orders a private line that you tell them this?

A. Well, no, not particularly if he had ordered a two

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party line and there was not facilities and I gave him a four then I would have told him that also.

Q. Then as far as you know the order was placed for a private line?

A. Yes, that is what it says on the order, R-1, that is a private line.

Q. Then as far as the record is concerned it shows that the defendant Lee ordered a private line, this is what he ordered?

A. Yes, it shows that a private line was ordered.

Q. And you don't have any present recollection with memory refreshed what you told him, this particular person, anything other than that?

MR. RUSS: Your Honor, I object to that, this witness has testified in answer to at least three questions that he did tell Lee he was on a party line.

THE COURT: I can't agree with you, the objection is overruled. Answer the question.

THE WITNESS: Repeat the question, please.

BY MR. KIRKLAND:

Q. Do you have a present recollection, that is, here today of the converation that you had with Mr. Lee on July 19, 1963?

A. Of the whole conversation?

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Q. Yes, sir.

A. I cannot remember every word that was said, no.

Q. Do you have a present recollection, with memory refreshed that you told Mr. Lee on that occasion during that conversation, the tenor of which was that despite what he ordered you had to give him a four party line because nothing else was available, do you have a present recollection of saying that?

A. I, I——

Q. Just answer yes or no, sir, if you can and then you can explain.

A. I'll say yes that I have a recollection of telling him this because, as I go back through my mind I can remember pretty nearly every move I made that morning from what he was dressed in on down.

Q. How many telephones did you install that day?

A. Oh, I will say five or six.

Q. Where else did you install them on July 19th?

A. I can't say the exact date.

Q. I told you the exact date, I asked you where else did you install on that date?

MR. RUSS: Your Honor, I object to this, we are going to the admissibility of exhibit 21.

MR. KIRKLAND: I will object to this at this time as to the defendant Lee but I will cross examine him.

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THE COURT: State's exhibit 21 will be received in evidence as State's exhibit 21.

MR. RUSS: 21a, Your Honor.

THE COURT: 21a in the case of the State of Florida versus the defendant Lee only.

BY MR. RUSS: (continuing direct examination.)

Q. Mr. Wheaton, would you tell us whether or not after you installed the number at 644-3780, you installed the service there were you checked it out?

A. Yes, I checked in two different ways.

Q. Would you tell us how you checked it out on the 19th of July?

A. It has got to be checked out always to make sure it is on the right line, we evert, we dial the number up on the telephone, we get a recording on our line less allowative time to be answered and then we hang the phone up, it rings itself.

Q. Did you do that on that morning?

A. Yes, sir; and at the same time we adjust the bell to the ring that the people ask us to, loud, softness.

Q. When you did this did you hear this recording?

A. Yes.

Q. Did you hang up?

A. Yes.

Q. What did you hear then?

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A. The bell on the telephone rang.

Q. Did you adjust the bell on the telephone?

A. Yes.

Q. In what other way did you check that the phone was properly installed?

A. I work with a dispatcher, I have to call every service order to him and we have him to call us back from an outside line to make sure that that phone rings.

Q. Did you do that in this particular instance?

A. Yes.

Q. Then what happened?

A. Then I talked to the dispatcher on the phone and to make sure that it rings too and I can hear him well.

Q. When the phone range did you hear the dispatcher well?

A. Yes.

Q. Did he appear to hear you well?

A. He said that he did.

MR. RUSS: I have no other questions.

CROSS EXAMINATION

BY MR. KIRKLAND:

Q. Mr. Wheaton, I want to call upon your excellent memory and ask you to give me the address of another phone that you installed on that day, the conversation that you had with the person there and what you told them?

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BY MR. RUSS:

Q. Mr. witness, would you please tell us what your name is?

A. Donald Brown.

Q. How do you spell your last name, Mr. Brown?

A. B-r-o-w-n.

Q. Would you tell us where you live, please?

A. Longwood.

Q. Do you have an address out there?

A. 250 Longwood, 250 Palmetto.

Q. What do you do for a living?

A. Work at the Winter Park Telephone Company.

Q. What do you do at the Winter Park Telephone Company?

A. I am an installation repair supervisor.

Q. Would you tell us what your job entails?

A. It entails insuring that all installations and repairs are maintained.

Q. Do you do some of that work yourself?

A. Sure.

Q. Mr. Brown, referring to the date of July 26, of 1963 did you have an occasion to go to a house at 221 Manor Road in Maitland, Florida?

A. Yes, sir; I did.

Q. When you went to that house would you tell the jury what you did, please?

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A. Well, I went there, I had a service order to install a telephone on a party line which I did.

Q. Do you recall where you installed that phone in that house?

A. Yes, sir; and there was a previous installation in that home when I installed the phone at that location.

Q. Was that telephone number 644-7040?

A. If that is what the order reads; yes, sir; with my initials if I can see it.

Q. I have an article here marked State exhibit 21b for identification (showing same to witness.) Is that a service order for that particular job?

A. Yes, sir.

Q. What was the telephone number you installed there?

A. I installed the number listed on this order?

Q. What is that, please?

A. That is 644-7040.

Q. Can you tell us how you went about installing it?

A. Yes, sir. I received this order and I went out to install the phone. I had a drop ran to a terminal predesignated on this information here and I do the order according to the assignment.

Q. Can you tell us where you hooked the wire up at the pole outside the house?

A. Right at the terminal on the, I by-passed the terminal

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in front of the house to the one on the corner of Live Oak and Manor Road.

Q. Can you identify that connection location for us?

A. Oh, yes.

Q. Would you do that, please?

A. Here you mean?

Q. (Mr. Russ nodding head.)

A. That is it.

Q. If you would just tell us where you hooked up that telephone to the pole?

A. On binding post three, it is a 10-tier termination.

Q. Can you tell us where this pole was that is what we are trying to get at?

A. The pole was on the corner of Live Oak and Manor Road.

Q. What was the installation location there on the pole?

A. On the pole?

Q. Yes.

A. It is about four and a half feet high on the terminal laying on the pole, that is on your drop wire to get access to your cable back to your central office equipment.

Q. Can you tell us where you made the installation on the pole referring to that service order?

A. On the pole?

Q. Yes, sir.

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A. All I did was tie the drop service going into the home on that pole, as I say, there is a 10-pier cable terminal of cable piers and I had predesignated pier on this order to tie my assignment to.

Q. Would you tell us that is, sir?

A. That is cable 26, pier 71, binding post 3.

Q. Did you make the installation at that location?

A. Yes.

Q. Did you receive that instruction to make that installation from your central office?

A. I received that from the assignment department.

Q. Who is the gentlemen in the assignment department?

A. The supervisor here is Mr. Martin Nold.

Q. N-o-l-d?

A. N-o-l-d.

Q. After you made the installation at the house at 221 Manor Road on the 26th of July of 1963, did you check the service?

A. Yes, sir.

Q. Would you tell the jury how you checked the service?

A. We checked the service by dialing the number which appears on your phone, you will get a report stating you have dialed a party on your line and it will ring back indicating you were on the proper line.

Q. Did you do that in this instance?

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A. I did that.

Q. Did you get a ring back?

A. Yes, sir.

Q. Did you get a recording?

A. Yes, sir.

Q. Which number?

A. 644-7040.

Q. Did you make any further requests?

A. I tested with the dispatcher and in turn he verified me.

Q. Would you tell us how you did that?

A. I called a dispatcher and had him to ring me back and I hung my phone up and he returned the call to me.

Q. Did you do that?

A. Yes, sir.

Q. Did the phone ring properly?

A. Yes, sir.

Q. This was after the phone had been hooked up?

A. Yes, sir.

MR. RUSS: Could I have just a moment, Your Honor?

THE COURT: All right.

MR. RUSS: Your Honor, at this time I would offer into evidence the exhibit 21b.

MR. KIRKLAND: As to what?

MR. RUSS: Let me ask one other question if I

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may, please.

BY MR. RUSS:

Q. I am sorry, Mr. Brown, I overlooked something. Can you tell us what type service you installed at that location on that day?

A. A residence-4.

Q. Would you tell the jury what you mean by a residence-4?

A. That means that it uses residence service and it is a four party line, there could possibly be four people on it.

Q. Four different numbers on that line?

A. Four different numbers on this line.

MR. RUSS: Your Honor, I would offer this subject to connecting it up very shortly.

MR. KIRKLAND: One or two questions.

CROSS EXAMINATION

BY MR. KIRKLAND:

Q. Mr. Brown, did you have a conversation with Mr. John A. Johnson?

A. No, sir.

Q. Sir?

A. John A. Johnson?

Q. Well, that was the person for whom you installed?

A. Well, I don't know if that was actually the person

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or not, I didn't know him by name, I knew him by sight.

Q. You have the work order here?

A. I have the work order.

Q. And you have been testifying from the work order?

A. Yes.

Q. And the work order shows you installed it for John A. Johnson, right?

A. John A. Johnson, I don't know if this was actually the man or the fictitious name used here, I don't know.

Q. You mean somebody lied to you about their name?

A. Oh, no, not to me.

Q. Well, who is John A. Johnson?

A. John A. Johnson?

Q. Yes, sir; the man you installed the phone for?

A. Unless he was the police officer there, I don't know who he is. I don't remember the names.

Q. Well, did you install a telephone at the house for somebody that you didn't know who it was?

A. We have many occasions to install phones for people with names that aren't there; yes, sir.

Q. But was there somebody here at the time?

A. Yes, sir.

Q. Was it John A. Johnson?

A. I don't really know.

Q. Did you have a conversation with a person there?

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A. Yes, sir.

Q. And did you tell the person there that you were sorry that you couldn't give him a party line, that you were going to have to put him on a party line?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. Did you tell him that you were installing a party line phone?

A. Yes, sir.

Q. You did?

A. (Witness nodding head)

Q. What does R-4, FAC mean?

A. FAC means hand set, hand cradle. Fixed hand cradle.

Q. Let me ask you this, Mr. Brown, did you know at the time you installed this phone you were installing it for somebody using a fictitious name?

A. I didn't know about the fictitious name.

Q. When did you find out about that?

A. Well, I still don't know.

Q. Well, you said a few minutes ago that you didn't know whether it was a man or fictitious name; is it the purpose of the Winter Park Telephone Company to install telephones for persons desiring to listen in on other persons?

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MR. RUSS: Your Honor, I object.

MR. KIRKLAND: I think we should know what the policy is of the Winter Park Company.

THE COURT: Wait until the Court makes a ruling.

MR. KIRKLAND: I will withdraw the question on that.

THE COURT: It has been withdrawn.

BY MR. KIRKLAND:

Q. Did there seem to be something unusual about the installation of this phone, Mr. Brown?

MR. RUSS: To which I object until counsel gets specific.

THE COURT: I will overrule the objection.

THE WITNESS: Would you state it again please?

BY MR. KIRKLAND:

Q. Was there something unusual about the installation of this phone at this place?

A. Well, it was on an emergency basis as far as the information that I received.

Q. From whom did you receive the information?

A. From the commercial department.

Q. And the man or woman from whom you received it?

A. A Mr. Carl Galloway.

Q. Mr. Carl Galloway and what was that message?

MR. RUSS: I object to that as being hearsay,

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Your Honor.

MR. KIRKLAND: The State can object to hearsay.

MR. RUSS: Why not, we are a party to a law suit, the rules apply to the State of Florida as well as anybody else.

THE COURT: I am going to sustain the objection. Let's not go into conversations so far removed.

BY MR. KIRKLAND:

Q. Where on here does it appear there was some emergency?

A. It doesn't state that.

Q. So, then, you emergenced over to 221 Manor Road, right?

A. Yes, sir.

Q. What did you find when you arrived there?

A. There was two gentlemen there that let me have access to installing a phone.

Q. How were they dressed?

A. Normal dress.

Q. What conversation did you have with them at that time?

MR. RUSS: Once again, Your Honor, we have got a hearsay.

THE COURT: Objection overruled.

THE WITNESS: Just the normal conversation.

BY MR. KIRKLAND:

Q. What was that?

A. I explained that I was there to install a telephone

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service.

Q. Who did they identify themselves to you as being?

A. Like I say, I don't remember names, I don't go by names, I don't try to remember names. In business it is impossible. I mean, service orders as I handle and see in a day's course.

Q. And it is difficult for you to remember what you say to each person that you install a phone for?

A. Well, I would say.

Q. It would be very unusual for you to go back a year and a year and a half and name the person for whom you installed a phone?

A. It would, sure.

Q. Did it mean anything to you by observing on this work order—let me ask you this, what does CC—

A. Coiled cord.

Q. I am sorry?

A. Coiled cord, receiver cord.

Q. The word, the letters, initials CC followed by Orange Ct Sheriff Dept, Attention Bob Tanner, what does that mean?

A. That is handled on the commercial end which I am not fully acquainted with, that doesn't mean much to me.

Q. How about if it is followed by the word bill, b-i-l-l?

A. It still—

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Q. It wouldn't mean bill Tanner?

MR. RUSS: Your Honor, the witness—

MR. KIRKLAND: Let me refresh his memory.

THE WITNESS: I said—

MR. RUSS: Your Honor, the witness said he didn't know what it means.

THE COURT: Let him answer the question.

THE WITNESS: Not being familiar with the commercial end of it, like I was saying, I am acquainted only with the type service the telephone number and the lower portion for my end of the work. This other represents some meaning to other departments.

Q. And that—look at that, Mr. Brown, if you would and tell me if that means anything to you at all?

A. It indicates to that it would be to me as far as my knowledge of this department.

Q. As what?

A. That would be billed to this.

Q. What would be billed to who?

A. Bob Tanner.

Q. What would be?

A. The telephone bill.

Q. And where in care of?

A. The Orange County Sheriff's Department.

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MR. KIRKLAND: I see. No further questions and we object on the grounds that it is a purely self-serving sort of document which is no connection directly or remotely connected with these defendants.

THE COURT: It will be received in evidence subject to the materiality being shown.

MR. RUSS: I have no other questions of Mr. Brown, Your Honor.

THE COURT: Do you have any further question in cross examination of this witness?

BY MR. KIRKLAND:

Q. Did you return to the scene of the installation at any time?

A. During, any time, no.

Q. Within two or three weeks, a month?

A. (Witness shaking head.)

Q. Did you take the telephone out later on?

A. Yes, sir.

Q. Who was present at that time?

A. I don't, like I say, I don't remember the gentlemen's name.

Q. Have you seen him out here in the witness room?

A. Not here; no, sir. In the witness room?

Q. Yes, sir.

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A. Yes, sir.

Q. You talked with them and they identified themselves to you as being with the Orlando Police Department?

A. Yes.

Q. And what else have you discussed with them in the witness room?

A. Nothing.

Q. That is all?

A. Yes, sir.

Q. Just, 'I am Mr. Johnson of the Orlando Police Department, I am Mr. Brown of the Winter Park Telephone Company?'

A. Well, I state what I am there for to do, what it is they stated, that they were from the police department.

Q. And you stated to them what you were here for?

A. Yes, sir.

Q. What did you state to them that you were here for?

A. To install a telephone.

Q. I am talking about the witness room here in the last day?

A. Oh, no, I didn't say that.

Q. What did you state then?

A. Nothing.

Q. I thought you said in the witness room?

A. I thought you were referring back to the installation.

[566]

A. It wasn't on there.

Q. What was it on?

A. I installed the phone and it wasn't on there, I looked.

Q. What was it on?

A. I said I possibly could have seen, possibly could have been.

Q. It possibly could have been?

A. No, sir.

Q. If there was, there—

MR. RUSS: I object to Mr. Kirkland harassing this witness.

MR. KIRKLAND: Would you read the question back?

(Whereupon Mr. Kirkland's last question was read as follows: "If there was, there—")

THE WITNESS: Possibly it wasn't hooked to the equipment when I left, that is what I was trying to say.

BY MR. KIRKLAND:

Q. That is what I was trying to get at, Mr. Brown, just exactly what you are trying to say. You stated that you observed some electronic equipment at the scene of the installation, is that right?

A. It could have been that.

Q. Well, what did it look like, describe it to these gentlemen, if you will?

[569]

on the same pier and also tied to the same identical line equipment in the office which would make those two phones on the same line.

Q. When you say they are on the same line what do you mean?

A. I mean they are party line situations, both phones being on the same party line are using the same set of relays and common equipment.

Q. As regards the one dealing with 644-3780, 411 Manor Road, was that done by your department?

A. This was done by my department, yes. This particular order was done without my knowledge, it went through with a group of orders.

Q. Do you know about the date of that assignment?

A. The due date on the order was 7 slash 19 slash 63, this would probably be either assigned the day or at the most days of this time.

Q. As regards the second one, 21b, pertaining to the address of 221 Manor Road, Maitland, and the number 644-7040, did you make that assigment?

A. Yes, we did. My department made that assignment.

Q. Did you assign the line and it was the second catagory here?

A. This is the line, this is the particular cable, this is the particular pier, this is the address of the

[575]

orders a month and I believe at the time I am sure there was only four party vacancies existing.

Q. Was that in that particular neighborhood?

A. Yes, sir.

Q. All right.

A. And that this was put on one of the four party vacancies existing on this, on 7142 line.

Q. Do you know how many four party line vacancies were in existence about that time which would have been convenient and economical to hook to 221 Manor Road?

A. I feel that there was very very few because this is one of our older sections of town and usually the subscribers have private lines or there's already established four party lines that have been in for some time, if you will.

Q. Was there any private line service available on that particular area on Manor Road during that particular time?

A. No, sir.

Q. Was there any other four party vacancies that were more convenient and economical than the one that you assigned to 221 Manor Road on that occasion?

A. No, sir.

Q. Can you tell us whether or not you received any communication in connection with the assignment of

[577]

the service at 221 Manor Road?

A. I received a verbal request from the commercial department to try and put this phone on the same line with the one at 411 Manor Road.

Q. Was that an extra-ordinary request in the activities of your department?

A. No, sir; we get a lot of these requests or the opposite requests that they would like to be with some other subscriber or don't want to be with a certain subscriber, so

long as it is feasible within limits we try to service all these requests to our subscribers.

MR. RUSS: I have no further questions of Mr. Nold.

CROSS EXAMINATION

BY MR. KIRKLAND

Q. Mr. Nold, I understand from what you say that the installation of telephones upon the request of subscribers is governed by records and regulations and tariffs, is that correct?

A. That correct, sir.

Q. Part of the regulations of the telephone company are that you install the equipment available that is ordered by the subscriber, is that correct?

A. Yes, sir; as far as feasible, sir.

Q. As far as possible even—

[578]

central office or somewhere out along the cable line?

A. Out along the cable line.

Q. Now, where in reference to 411 Manor Road?

A. It would have been a long 17-92 down towards the central office, between that location and the central office.

Q. In point of feet or miles how far would that be?

A. To the best of my knowledge, sir, it would have been about a half to a quarter of a mile that another splice ran.

Q. About another quarter of a mile, perhaps?

A. Yes, sir.

Q. And you say that it was more coincidence than design that the telephone installed at 211 Manor Road was connected to the party line at 411 Manor Road?

A. Yes, sir.

Q. Purely coincidental, it just so happened that that line was available and somebody ordered that line and it was pure coincidence that it ended up on the party line at 644-7040?

A. Yes, sir, but I had a request.

Q. Who requested it?

A. Commercial.

Q. Who was it?

A. Mr. Galloway, Carl Jr.

[584]

A. Sir, this is not under my authority, my authority is to assign them and to get them to the field, actually the installers fall under the outside plant management.

Q. As I understand it you were told by Mr. Galloway to find a connection on the wire or circuit or piers and install it to 221 Manor Road so as to be on the same party line as 411 Manor Road?

A. Sir, I was asked if possible to try to put this phone on 411 Manor Road.

Q. What was the other possibility to install it if you couldn't find it?

A. It was just if I could, if I couldn't I don't really know what the outcome or how the order would have been put in. I imagine it would have been held up until facilities had been put into it.

Q. Mr. Nold, are you aware that when the installer went out to do it, to install that that there were officers with the Orlando Police Department with equipment to install on that telephone?

A. No, sir.

Q. To your knowledge is that contrary to company regulations and tariffs?

A. All I was involved—

Q. Just answer the question. Is that contrary to

[589]

with that particular telephone?

A. Yes, sir; I did.

Q. Would you tell the Judge and tell the jury what your activity was, please?

A. I installed or attached a tape recorder and an automatic actuator to the telephone system.

Q. That was at 221 Manor Road?

A. At 221 Manor Road; yes, sir.

Q. I've got here several articles that the Clerk has identified for us as exhibit 22a and 22b for identification which I would like you to take a look at and identify if you can?

A. Yes, sir; this item marked 22a is an automatic actuator and the other item is a tape recorder.

Q. Have you seen these two items previously?

A. Yes, sir; I have. These are the two items that I installed in 221 Manor Road.

Q. Would you tell us and explain to us how you made that installation?

A. Yes, sir. The actuating device has a wire, this wire here attached to it, I attached this wire to the telephone wall outlet. I then—

Q. Would you tell us how you attached it to the telephone wall outlet?

A. Yes, sir; by loosening two screws the wall outlet and

[600]

the wires are color coated, by loosening two screws and attaching the red wire to the screw that had an already red wire attached to it and attached a green wire that already had a green wire attached to that particular screw.

Q. Was it necessary to take the cap off this wall outlet?

A. Yes, sir; it is a small plastic cap that fits over it. I removed this and attached the wire to the two screws.

Q. What other connections did you make?

A. I then took the power cord which is this cord right here.

Q. Would you unit those cords so that we can see them?

A. Yes, sir. I took the power cord which is the darker cord and plugged this into the regular 110 outlet in the wall and took the power outlet from the tape recorder which is this cord here and plugged it into the tape recorder and attached it to the regular 110 current outlet on the wall. I then took this wire here—

Q. You are referring now to the tape recorder?

A. The wire on the tape recorder, and I attached this to, I attached this to the automatic actuator and inserted it in input plug in the actuator that is marked as recorder motor outlet. I attached this wire, this wire then ran between the actuator and the

[601]

tape recorder wire.

Q. This is a dark black wire?

A. That is a dark black wire.

Q. What other installation did you make?

A. I then attached another wire which I don't have a replica of within the output jack on the actuator and the micro-

phone input jack which is located on the left side of the tape recorder.

Q. That is the left rear of the tape recorder?

A. The left rear of the tape recorder and the apparatus which was then attached to the wall and the tape recorder.

Q. After you had connected up all those wires, did you do anything to the tape recorder?

A. Yes, sir; I placed a tape on the tape recorder and an empty spool on the right hand side of the tape recorder and a full of tape on the left side of the tape recorder and ran the tape through the recording head on the tape recorder.

Q. Would point to the tape recorder and show us what you are talking about?

A. Yes, sir. This is the spool or this is the stud where the full spool of tape would be placed, this is the stud where the empty spool would be placed and the tape ran through this slot here on the front of

[602]

the tape recorder and the recording heads are down inside this slot.

Q. After you made that connection did you turn the tape recorder on?

A. Yes, sir; I did, I turned the tape recorder on by first depressing the record activating switch which is the third switch from the left hand side of the tape recorder. I depressed this and turned it and at the same time I turned the large switch, the large switch in the center of the machine to the right. I also adjusted the volume control switch which is the one on the left hand side, the second switch from the left hand side, I adjusted this so the recording level would be set properly and anything that was passed through the machine would have the proper recording level.

Q. Now, after you had hooked this all up and you turned the tape recorder on did the tape move?

A. Yes, sir; it did. Excuse me, there is one thing I forgot which is the most important thing, prior to doing any of this I turned the off-on switch to be on position. After all of this had been completed and the telephone receiver was lifted then the tape—

Q. Which telephone receiver was lifted?

A. The telephone receiver on the telephone at 221 Manor

[603]

Road, I lifted the receiver to make sure the tape recorder was operating properly and when I did this the tape began to move and I also, as I did this, I could see right behind the large switch on the machine, I could see the arrow move to the record level indicator and this showed me visually the machine was in operating condition and recording any conversation.

Q. Would you tip it up and show us?

A. Yes, sir; right up here there is an arrow and it is got a small dial and numbers ranging from one to ten.

Q. And that dial moved, is that the idea?

A. Yes, sir.

Q. After you got it installed and you picked up the telephone receiver did you then put the receiver back down again?

A. Yes, sir; I did and when I did the tape stopped moving through the recording head and the spool stopped moving and the recording head stopped.

Q. Did you check?

A. Yes, sir; I ran the tape back to the very beginning and started it over again and at this time I could hear the dial

tone on the tape itself, the dial tone I heard when I moved the receiver on the telephone.

Q. In addition to this tape recorder getting this dial tone were you checking it yourself?

[604]

A. Yes, sir; I had a pair of ear phones and they were plugged in too. There was a slot on the far side.

Q. Would you show us?

A. This jack here and I plugged into the external speaker jack and could hear what was coming through the tape recorder on the ear phones. I heard the same things through the ear phones that I later heard when I ran the tape back and played it. I heard the dial tone.

Q. Would you explain this to us, as I understand it the tape moved when you picked the receiver up and it stopped when you put the receiver down, is that correct?

A. Yes, sir; that is correct.

Q. In the meantime the tape recorder was on all the time?

A. The machine itself was on, the amplifier and the tubes were warm but the motor was not turning until the receiver was lifted from the cradle on the telephone.

Q. Well, when the motor did not run what would that do?

A. The tape would not turn and the tape would not record until the tape passed through the recording head on the machine.

Q. Then this was moving automatically?

A. Yes, sir; this is an automatic actuator.

[605]

Third day of trial, Thursday June 11, 1964.

THE COURT: The State ready to proceed?

MR. RUSS: The State is ready.

THE COURT: The defense?

MR. KIRKLAND: The defense has a formal matter to take up before the jury comes in, your Honor.

THE COURT: Note the presence of the defendants.

MR. KIRKLAND: Your Honor, in listening to the testimony of the witness Merrick who was on the stand yesterday not being conversant with electronic equipment and eavesdropping equipment, I spent a little time in research on it last night and the method adopted and used by the State in this case was confusing to me because I didn't quite understand the sophistication of the way it was done. In order to fully understand it, which, of course, is counsel's duty I inquired of Mr. Merrick very briefly about some of the questions in my mind out of the presence of Mr. Russ. He then went into a little more detail about it and the imprssion I got this morning is not, and I am sure not his fault, it is my fault, is not the impression I got from him yesterday. It appears and I

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would simply offer this by way of a proffer that instead of the recording being made by attaching an automatic actuator to a party line, that actually the officer attached a device for the interception of messages on to the direct line of the phone located at 411 Manor Road. Now, this again may be a distinction without a difference, but if your Honor please I think that if the State is relying upon Williams versus State and Giffiths versus State, in that case, in those cases, this was nothing more than the officer picking up the receiver and listening in on the phone. Now, Mr. Merrick explains to me that this automatic adaptor or actuator is not connected to the phone at all, that it is connected to the hot line and as such it is quite possible that instead of this being an eavesdropping on a party line that it is an intercep-

tion or an interference or a direct tap on the defendant's line and for that reason upon that proffer I would like to conduct a brief voir dire examination of the witness to make it clear for the record because to me this is probably the most important facet of the case thus far, the admissibility of this evidence.

[637]

I must reiterate, if your Honor please, the complete abhorrence that the recent Supreme Court have had and held wire tapping or eavesdropping, they have condemned it in every way and the cases in Florida have by inunendo not approved the practice but have approved what was done in that particular case. So, in view of the importance of the matter, in view that the telephone company representatives have testified, at least one of them, that this electronic equipment was there and to be attached in violation of none tariffs and regulations which is a violation of 605 of the Federal Communications Act and in view of the fact that even though I've had some experience with it in previous cases, I still don't know too much about the difference between eavesdropping and wire tapping and I'm satisfied the jury does not know that. I would like to briefly go into this question with the witness first by forming and stating an objection to the admissibility of the testimony on the tape recording on the grounds it was as a result of an unreasonable search and seizure and violation of fourth and fourteenth amendment as it applies

[638]

to the Declaration of Rights Section 22 of the Declaration of Rights of the State of Florida and it wouldn't take but a minute and I'm sure that your Honor would not object to my preserving it for the record this rather important constitutional right.

THE COURT: The State have anything to say?

MR. RUSS: Your Honor, it is my position that the testimony is abundantly clear as to how the connection was made, that the witness has very clearly testified that the connection was made at the point where the telephone was connected to the wall unit, to the wall box, and there's no question as regards the legality of such a connection on a party line system. The case of Giffith versus State, 111 Southern Second 282 dealt specifically with such an installation and I should like to read to you from the report of that case on page 283 where the statement of facts was laid out, the McCollum in this instance is the police officer, "The main question on this appeal revolves around the evidence and testimony of one Ed McCollum, a special investigator for the Attorney General of Florida. Several months before the

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of 644-7040?

A. At that particular time?

Q. Yes, sir.

A. On the 26th of July.

Q. All right, sir, when did you install this stuff?

A. On the 26th of July.

Q. That is what I am talking about. Now, Mr. Merrick, can you testify from your own knowledge whether or not the defendant Clyde Lee or any of the other defendants in this case were aware of the installation of that telephone at 221 Manor Road?

A. No, sir; I can not.

Q. Can you testify as to whether or not any of them told you that they were aware of that installation? Did any-

one tell you that they were aware of that installation at the time that it was installed there?

A. No, sir; nobody did.

Q. Now, after the Winter Park Telephone man had completed the installation of this telephone you then set about your business to put some other equipment in there, right?

A. Yes, sir; I did.

Q. And part of it was an automatic adaptor, is that correct?

A. An automatic actuator.

[654]

Q. Then it means on the same line?

A. The same party line telephone system; yes, sir.

Q. And the effect of it was that you could overhear any conversations that were had on any of the four party lines?

Q. And this could be done without picking up the receiver on the telephone at 221 Manor Road?

A. Yes, sir.

Q. And the way that the phone was actuated was by the decrease in the voltage on the line when the receiver was picked up at 411 Manor Road or when the phone was ringing at 411?

A. I believe I missed a word in there.

Q. Actuated, the tape recorder was actuated by the drop in the voltage occasioned by the ringing of the phone at 411 Manor Road or lifting of the receiver at 411 Manor Road, right?

A. Right, or any other phone on the party line; yes, sir.

Q. And this then made it necessary for you to guard the telephone receiver, it was constantly left in the—

A. Cradle, yes, sir.

Q. Cradle. Now, let me ask you this, on any of these conversations that you have overhead and that you have reported were they with persons that had private

[660]

A. What persons?

Q. The defendants?

A. No, sir.

Q. Did you attach to it a recorder equipment with the beep signal?

A. No, sir.

Q. Did you attach the apparatus or device not furnished by the telephone company without their express permission?

MR. RUSS: Judge, we have been through this and I object to it as repetitions.

MR. KIRKLAND: I am getting it right down in these cases.

THE COURT: The objection will be overruled. Finish up.

BY MR. KIRKLAND:

Q. Did you attach these things to this equipment without the express authority of the Winter Park Telephone Company?

A. Yes, sir.

Q. And in result of it you intercepted and recorded telephone conversation?

A. Yes, sir.

Q. Did you at any time have the permission of the sender of any of those calls to so do?

[664]

MR. RUSS: Judge, I object as repetitous.

MR. KIRKLAND: I am talking about the sender on it.

THE COURT: The objection is overruled. You can answer the question.

THE WITNESS: No, sir.

MR. KIRKLAND: I have no further voir dire examination. I would renew my objection, your Honor.

THE COURT: Do you have anything?

MR. RUSS: Just one, your Honor.

CROSS EXAMINATION (voir dire)

BY MR. RUSS:

Q. Mr. Merrick, as regards the location of this wall box is this on the interior of the Florida room or on the outside of the house at 221 Manor Road?

A. It was on the interior of the Florida Room.

Q. Inside the house?

A. Yes, sir.

Q. It was not necessary for you to go outside the house to make any connection, is that correct?

A. No, sir; it was not.

Q. Did you make any connection any place else other than that wall box that was inside the Florida room?

A. No, sir; I did not.

[665]

THE COURT: Do you concede the jury in the box?

MR. RUSS: The State does, your Honor.

MR. KIRKLAND: Yes, your Honor.

THE COURT: Proceed with your next witness.

MR. RUSS: Mr. Horner, please take the stand. Have you been sworn?

MR. HORNER: Yes.

HERBERT L. HORNER

(first having been duly sworn, testified as follows:)

DIRECT EXAMINATION

BY MR. RUSS:

Q. Mr. Witness, would you direct your answers to these questions to the jury, please. Tell us first what your name is?

A. Herbert L. Horner.

Q. What is your occupation?

A. I am a police officer with the City of Orlando Police Department. I am attached to the intelligence unit.

Q. Is that the same as the Vice Squad?

A. That is right.

Q. Would you tell us where you live, please?

A. 521 West Harvard Avenue, Orlando.

Q. With reference to the date of August the 2nd, 1963, at that time were you acquainted with a house located in the Maitland, Orange County, Florida, listed as

[697].

house number 221 Manor Road?

A. Yes, sir; I was.

Q. On that particular date did you have an occasion to go to that house?

A. Yes, sir.

Q. Would you tell the jury about what time you went there?

A. I arrived there at approximately 5:00 P.M. in the afternoon.

Q. When you arrived there did you enter the house?

A. Yes, sir.

Q. Would you tell the jury what, if anything, you observed at that time?

A. At that time I entered the house Officer Merrick was there. He was seated in the Florida room which is at the Southeast side of the building. He was seated at a place in the Florida room near the telephone. He had a head set on his head, there was tape recording or a tape recorder there and an actuator unit attached to the tape recorder and in turn attached to the telephone wall outlet and these were also attached to the regular house voltage outlet.

Q. Now, at that time did you know what Mr. Merrick's full name was?

A. Yes, sir; Francis E. Merrick.

Q. As regards this particular house had you had any

[698]

contact or made any arrangements concerning this house prior to the date of August the 2nd, 1963?

A. Yes, sir.

Q. Would you tell the jury what that was, please?

A. I had had some contact with a Mr. Gale in Maitland, Florida, who was a realtor in charge of the premises

there and obtained through him permission to use the house.

Q. Did you receive a key for the house at that time?

A. Yes, sir.

Q. At the time that you arrived there, did you receive this same key from Mr. Merrick?

A. Yes, sir.

Q. While you were there at approximately 5:00 o'clock, on Friday, August the 2nd, 1963, did you observe whether there was anything on the tape recorder?

A. Yes, sir; there was a tape on the tape recorder that is known to me as tape x.

Q. If you would glance down here a minute, Mr. Horner, we have a tape that is on the tape recorder at this time on the left hand side and also a box which the tape came out of which has been placed in evidence as exhibit 23. Would you please examine it?

A. This is the tape that is known to me as tape x.

Q. Now, I also have over here two articles that have

[699]

A. It was approximately 6:16.

Q. It was in the afternoon?

A. In the afternoon; yes, sir.

Q. Do you have any, what is your best estimate as regards the termination of that conversation?

A. After the tape wire was put on the machine it terminated approximately a minute or two later.

Q. So that would have put it at approximately 6:20 to 6:22?

A. Approximately; yes, sir.

Q. Mr. Horner, I would like to ask you now to listen to another portion of exhibit number 24, commencing at counter marker 006.

MR. RUSS: Your Honor, I offer this portion of the exhibit in evidence going to the defendant Clyde Lee and to the defendant Cecil Merritt.

BY MR. RUSS:

Q. Mr. Horner, will you please listen to this?

(Whereupon the tape recorder was played audibly.)

BY MR. RUSS:

Q. Mr. Horner—

THE COURT: I will instruct the jury.

The conversation, the recording you just heard was received and introduced in the case of the defendant Clyde Lee and the defendant Cecil

[756]

St. Clair Merritt only and you are to disregard it as to the other defendants.

BY MR. RUSS:

Q. Mr. Horner, the counter position is now at 015. I will ask you whether you heard the conversation of which you just heard the tape recording when you were at the house at 221 Manor Road on Friday August the 2nd, 1963 with the head set on your head?

A. Yes, sir; I did.

Q. Based upon your personal hearing of this conversation and hearing it again on the recording exhibit number 24 are you able to state whether the recording is a complete and accurate recording of what you actually heard?

A. Yes, sir; it is.

Q. And as regards the conversation of which you have just heard a recording are you able to give us any further identification of it?

A. Yes, sir; this was an incoming call, Mr. Lee was the party answering the phone, it occured at 6:38 P.M. on the afternoon of August the 2nd, 1963. The man who made a statement about he just talked to the Pepsi Cola was Clyde Lee and the man who asked him if she was coming home was Cecil Merritt.

Q. Do you see Cecil Merritt here today?

[757]

on the grounds previously stated and you can return the jury.

(Whereupon the jury were seated in the jury box and all present at 10:20 A.M.)

MR. RUSS: Your Honor, I would recognize the jury in the box.

MR. KIRKLAND: The defendant does likewise.

THE COURT: Proceed.

BY MR. RUSS: (Continuing)

Q. Mr. Merrick, based upon the personal contact which you stated you had with Glen Brecheen on January the 20th 1964, would you tell this jury whether you can or cannot identify the voice of Glen Dulen Brecheen?

A. Yes, sir; I can identify the voice of Glen Brecheen.

Q. Referring now to these two conversations that you heard while at the house at 221 Manor Road on Monday August the 5th 1963, in which you say that you identified the common voice of Clyde Lee would you tell the jury what

further identification you can make as regards these two telephone conversations?

A. Yes, sir; On the first conversation it was an incoming telephone call. The conversation was—

Q. Would you speak up and direct your answer to the jury?

[1050]

A. Yes, sir. The call was an incoming telephone call and the voice of the party that answered the phone was that received the telephone call was a voice that I recognized as being the voice of the defendant Clyde Lee. The voice that was calling or making the telephone call was a voice I recognized as being the voice of the defendant Glen Brecheen and they discussed several numbers.

Q. As regards the second telephone call are you able to identify that further for the jury?

A. Yes, sir; the second telephone call was also an incoming telephone call and the voice of the party receiving the call was a voice that I recognized as being that of Clyde Lee. The voice of the party who made the telephone call, initiated the telephone call, was a voice that I recognized as being Cecil Merritt and they discussed about meeting each other, they talked about meeting each other.

Q. You say this happened between twelve noon and 4:00 P.M.?

A. Yes, sir; between twelve noon and 4:00 P.M.

Q. When did you leave the house at 221 Manor Road on Monday August the 5th 1963?

A. At approximately 4:00 P.M.

Q. At the time that you left was anyone else there?

[1051]

2nd through Thursday, August 8th and yet at this time that you were testifying that the numbers mentioned in

these assumed conversations of 524, 697, 586, 179 and 566 are also in your opinion the winning bond numbers, would you explain that variation, please?

MR. KIRKLAND: If the Court please, I object to any explanation as the result of a hypothetical question. He can give his opinion as to the hypothetical but can not explain how he arrived at his opinion.

THE COURT: The objection will be sustained.

BY MR. RUSS:

Q. Lieutenant Goode, considering now the prior testimony which you've given here this afternoon, considering the winning bond number for the time period August 1 through August 8, 1963, inclusive as determined from the Wall Street Journal and considering the answers that you've just given to the prior questions and considering also your training and knowledge and experience in the field of lottery, would you please assume this, assume that on Friday, August 2, 1963 at approximately 6:38 P.M. Clyde Lee and Cecil Merritt had a telephone conversation during which the number 524 was mentioned, that on the same date

[1535]

at approximately 6:55 P.M. Clyde Lee had a telephone conversation in which he mentioned the number 524 and in response to a question poised to him by the other party to the conversation which is, I quote, "What about yesterday?" Lee replied, "441." Assume further that on Monday, August 5, 1963, Lee made two telephone calls at approximately 5:24 P.M. and 5:25 P.M. in which he mentioned the number 697, assume further that on Tuesday, August 6, 1963, Clyde Lee made two telephone calls at 4:52 P.M. and 4:53 P.M. in which he mentioned the number 586, assume further that on Wednesday, August 7, 1963, Clyde Lee made one telephone call at 5:35 P.M. during which he

mentioned the number 179 and assume further that on Thursday August 8, 1963, Clyde Lee made two other telephone calls at 4:12 P.M. and 4:13 P.M. in which he mentioned the number 566, would you tell us whether or not you have an opinion concerning the meaning and the significance of the numbers mentioned by Mr. Lee in these conversations between August 2 and August 8, 1963, inclusive?

A. I do have.

Q. Would you tell the jury what your opinion is, please?

MR. KIRKLAND: We object as invading the province of the jury and not the proper hypotheti-

[1536]

cal and the statement contained in the hypothetical is contrary to what the record shows.

THE COURT: Objection overruled Answer the question.

THE WITNESS: In my opinion the conversation has reference to winning bond numbers on the dates mentioned with the exception of 441 which would be the winning bond number for the day before the call was made.

BY MR. RUSS:

Q. Which day was that, sir?

A. It would be August the first.

Q. All right, go ahead.

A. And the number of 179 on August the 7th which would have a one digit variation from—

Q. From what, sir?

A. The number that I have arrived at.

Q. Lieutenant Goode, I'd like to go on and ask you to consider the testimony that you've already given here this afternoon while testifying and considering further your training and experience and your knowledge in the field of lottery, would you assume for the purposes of this question that on Thursday, August 8, 1963 at approximately 3:34 P.M., Clyde Lee and Macon Tribue had a telephone conversation

[1537]

which in part contains the following statement by Mr. Lee and I quote, "She had 679 for a nickel but 697 is what come up." Response by Mr. Tribue, "Okay, 697." Response by Mr. Lee, "697, the number that come out" Do you have an opinion concerning the meaning and the significance of the number 697 as mentioned in this conversation?

A. I do.

Q. Would you please tell the jury what your opinion is?

MR. KIRKLAND: Same objection, your Honor.

THE COURT: Same ruling, answer the question.

THE WITNESS: In my opinion that conversation had to do with the winning bond number for Monday, August 5th.

BY MR. RUSS:

Q. Of what year?

A. 1963.

Q. Next question, would you consider the answers that you have given here in your testimony this afternoon and considering further your training and experience and knowledge in the field of lottery and would you assume for this question that a series of phone calls were made to 423-2867 as I will describe as follows, a telephone call to this number

on Friday, August 2, 1963, at approximately 6:55 P.M. in which in

[1538]

addition to mentioning the numbers 441 and 542, Mr. Lee mentioned in this order the numbers 28, 66 and 80 and then another telephone call to the same number by Mr. Lee on Monday, August 5, 1963, at approximately 5:24 P.M., Mr. Lee mentioned in addition to the number 697, the following three numbers in this order 12, 30 and 81, that further on Tuesday August the 6th, 1963, Mr. Lee called this same number at approximately 4:53 P.M. and mentioned in addition to the number 586, the following three numbers in this order, 11, 33 and 95 and that on Wednesday, August 7, 1963 at approximately 5:35 P.M. Mr. Lee called the same number and in addition to mentioning the number 179 he further mentioned in this order the following three numbers, 25, 70 and 92. And that on Thursday August 8, 1963, at approximately 4:12 P.M. Mr. Lee again called this same telephone number and mentioned in addition to the number 566, the following three numbers in this order, 15—excuse me, 15, 69 and 41. I would like you to tell this jury whether or not you have an opinion as regards the meaning and the significance of the additional three digit numbers referred to in each of these conversations?

A. Yes, sir; I have an opinion.

[1539]

Q. Now, would you state to the jury generally what your opinion is?

MR. KIRKLAND: If the Court please, the same objection. Meaning and significance is not expert testimony.

THE COURT: Same ruling, answer the question.

THE WITNESS: In my opinion those series of three two digit numbers represent the winning bolita number for those particular days mentioned.

BY MR. RUSS:

Q. And would that be one winning number or more than one winning number?

A. It would constitute one drawing per day, the series of three winning numbers for each day.

Q. Considering the date of Friday, August 2, 1963, in which it is assumed the number 28, 66 and 80 was mentioned in addition to the number 524, what in your opinion did the numbers 28, 66 and 80 represent?

A. In my opinion they would represent the winning Bolita numbers for Friday August the 2nd.

Q. Would you tell us what in your opinion the numbers 12, 30 and 81 assumed to be mentioned in the conversation of Monday August 5th, 1963, represent?

A. In my opinion they would represent the winning Bolita

[1540]

numbers for Monday, August the 5th.

Q. And in your opinion would you tell us what the numbers 11, 33 and 95 mentioned in the conversation as assumed of Tuesday, August the 6th 1963, represent?

A. In my opinion they would represent the winning Bolita numbers for Tuesday, August the 6th.

Q. And as regards the date of Wednesday, August 7, 1963 would you tell us what in your opinion the number assumed to be stated of 25, 70 and 92 represent?

A. In my opinion they would represent the winning Bolita numbers for that date.

Q. And as regards the assumed telephone conversation of Thursday August 8, 1963, would you tell us what in your opinion the numbers 15, 69 and 41 represent?

A. In my opinion they would represent the winning Bolita numbers for that particular date.

Q. Now, Lieutenant Goode, for the next series of questions, I would like you to please consider the testimony that you've given here this afternoon while you've been on the stand and I'd like you to consider further your training and experience and knowledge in the field of lottery. I'd then like you to assume that on Monday afternoon August the 5th, 1963, Glen Brecheen called Clyde Lee on the telephone and men-

[1541]

tioned the following series of numbers to Mr. Lee in this order, 8763, 5663, 5002, 1002 and assume further that on Wednesday, August 7, 1963 at approximately 2:17 P.M. in the afternoon, Glen Brecheen again called Mr. Lee on the telephone in which they had the following conversation, Mr. Brecheen, "I got 566 for three with you, how about scratching that out and putting two others on 876?" Response by Mr. Lee, "876." Response by Mr. Brecheen, "Yeh, the other one on 500." Response by Mr. Lee, "500, Okay." Assume further that on the following date Thursday, August the 8th, 1963, at approximately 4:11 P.M. in the afternoon Glen Brecheen again spoke to Mr. Clyde Lee on the telephone during which they had the following conversation, Mr. Brecheen, "Remember that one I took off yesterday?" Response by Mr. Lee, "Ya, un huh." Response by Mr. Brecheen, "It come today." Response by Mr. Lee, "God damn." Response by Mr. Brecheen, "566." Response by Mr. Lee, "566." Response by Mr. Brecheen "Ain't that a bitch." Response by Mr. Lee, "It's hard luck, ain't it?" Response by Mr. Brecheen, "Ya, it sure is." Assume further that on the same Thursday afternoon of August the 8th 1963, approximately a minute later, at 5:12 P.M., excuse me, at 4:12

[1542]

P.M., Mr. Lee had the following telephone conversation with the second person by Mr. Lee, "566." Response by

second voice, "566." Response by Mr. Lee, "You know I had a guy who has been playing $300 a day on 566 with me." Response by second voice, "And you did not play?" Response by Mr. Lee, "Yesterday he told me to cancel it, he said play it for me today, but cut it off after today and it comes out today." Second voice, "And you did not have none on it?" Response by Mr. Lee "No." Response by second voice, "Goodness gracious that is a bad—" Response by Lee, "I bet he is sick." Response by second voice, "I know he is." Considering this, Lieutenant Goode, I would like to ask you concerning your opinion on several questions. First I would like to ask you if you have an opinion concerning the meaning and the significance mentioned in the conversation between Mr. Brecheen and Mr. Lee of Monday August 5, 1963, in which it is assumed the numbers 8763, 5663, 5002 and 1002 were mentioned?

A. I do have an opinion.

Q. Would you tell the jury what your opinion is?

MR. KIRKLAND: Same objection, your Honor.

THE COURT: Same ruling. Answer the question.

[1543]

THE WITNESS: In my opinion that is a series of bond bets being placed.

BY MR. RUSS:

Q. Would you break it down for us?

A. Two of the bets had Three Dollars placed on the numbers and the last two, Two Dollar bets each.

Q. Considering the number 8763, what in your opinion is the meaning and significance of that?

A. That is a Three Dollar bet on that particular number.

Q. On what particular number?

A. 873, I believe you said.

Q. No, I said 8763.

A. 876, it is a Three Dollar bet on 876.

Q. And a number 5663?

A. That is a Three Dollar bet on 566.

Q. And the number 5002?

A. That is a Two Dollar bet on 500.

Q. And the number 1002?

A. Two Dollar bet on 100.

Q. Considering the same question I've asked you, the long question concerning the conversation of Wednesday, August 7, 1963, in relationship to what you have just stated concerning your opinion of the conversation of Monday, August 5, 1963, now when Brecheen on Wednesday is assumed to have said "I

[1544]

MR. RUSS: That's correct, your Honor, my amended offer is as follows: exhibit 1A to the defendant Lee. Exhibit 1B through 1Q is withdrawn. Exhibit 1X is offered to the defendant Bradshaw. Exhibit 2 is withdrawn. Exhibit 3 is offered to the defendant Lee. Exhibit 4 is offered to the defendant Lee. Exhibit 5a and 5b are offered to the defendant Lee. Exhibit 7 is offered to the defendant Lee. Exhibit 8 is offered to the defendant Lee. Exhibit 9 is offered to the defendant Lee. Exhibits 10, 10a, 11, 12, 13, 14, 15a, 15b, 16, 17, 18 and 19, 21A, 21b, are offered to the defendant Lee. Exhibits 23, 24, 25, 26, 27 and 28 which have been identified as magnetic tapes are offered in so far as those portions of those tapes that have been played in the presence of the jury during the course of this jury trial are offered to the defendants Lee, Merritt, Brecheen, Bradshaw and Locke. That por-

tion of Exhibit 27 which purports to contain a conversation between the defendants Lee and Macon Tribue which took place on or about August 8, 1963, commencing at 3:43 P.M. and which begins approximately at the counter

[1589]

position 670, that tape is offered to the defendant Macon Tribue. Exhibit 29a, 29b, 29c, 29d are offered to the defendant Lee. Exhibit 30a, 30b, 30c,—excuse me, exhibit 30a is offered to the defendant Bradshaw. 30b and and 30c are offered to the defendant Lee. 30d as in dog is withdrawn. Exhibit 31a is withdrawn. Exhibit 31b and 31c and 31d and 31e and 31f and 31g, h, i, and 31j are offered to the defendant Lee. In addition exhibit 31d and 31j are offered to the defendant Locke Exhibit 32a is offered to the defendant Lee, exhibit 32b is offered to the defendant Locke, exhibit 33a, 33b and 33c and 33d as in dog are offered to the defendant Lee. Exhibit 33e as in easy and 33f as in fox are offered to the defendant Tribue. Exhibit 35 is offered to the defendant Lee. Exhibit 36a, b, c, d, e, and f, are offered to the defendants Lee, Merritt, Brecheen, Bradshaw, Locke and Tribue and I believe that exhibit 38 has already been admitted into evidence and published to the jury.

I would again offer that to clarify the record to the defendant Lee.

THE COURT: The defense have anything for the

[1590]

record in view of the reoffer?

MR. KIRKLAND: That modifies it a bit, if your Honor pleases, but we still would object on the grounds that all of this evidence that they referred to is the result of an unreasonable and unlawful search and seizure, there has

been a showing of connection between the house raided on Cameron Avenue on Manor Road, that this evidence was obtained as the result of an unlawful and illegal wire tapping, illegal electronic surveillance. Further, it is the fruit of the poisoned tree that the court has held to exist at the house on Cameron Road. There has been no connection between this evidence as presented and the defendants that it is presented against and that we move to suppress the evidence on the grounds of illegal search and seizure, for return of the evidence on the grounds that it was unlawful and unreasonably seized.

THE COURT: The objection will be overruled and each of the exhibits will be received in evidence as to the defendants indicated in the offer. You want to dispose of these motions for directed verdict?

[1591]

IN THE CIRCUIT COURT, NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA
-vs-
PREMISES LOCATED AT
411 MANOR ROAD
MAITLAND, ORANGE COUNTY, FLORIDA

SEARCH WARRANT

IN THE NAME OF THE STATE OF FLORIDA:
TO: THE SHERIFF OF ORANGE COUNTY, FLORIDA, AND HIS LAWFUL DEPUTIES; THE CONSTABLES OF ORANGE COUNTY, FLORIDA, AND THEIR LAWFUL DEPUTIES.

WHEREAS, a sworn application under oath and in writing has this day been made before me, the undersigned FRANK A. SMITH, Circuit Judge of the Ninth Judicial Circuit of Florida by HERBERT HORNER, FRANCIS E. MERRICK, JOHN R. BACHMAN, and JAMES GOODE for a search warrant

which states that affiants have reason to believe and do believe that those certain premises located in Orange County, Florida, described as follows, to-wit:

> A one story, concrete block dwelling house located at 411 Manor Road, Maitland, Orange County, Florida, which dwelling house is located on the north side of Manor Road, facing south, and which dwelling house is on the northeast corner of the intersection of Manor Road and Live Oak Street, said dwelling house is painted white with brown trim,

being the premises occupied by or under the control of Clyde Lee, there are now being kept on said premises certain lottery tickets, records, implements, devices and paraphernalia used for the purpose of promoting and conducting a lottery, which are now being kept and used in violation of the laws of the State of Florida prohibiting lottery. That the facts tending to establish the grounds for this application and probable cause of affiants' belief that such facts exist are as follows:

That affiant Herbert Horner has personally spoken with Clyde Lee and can recognize and identify the voice of Clyde Lee. That at approximately 5:25 p.m. on August 5, 1963, affiant Horner was in a dwelling house located at 221 Manor Road, Maitland, Orange County, Florida, listening on a telephone located in said dwelling house, which telephone was numbered 644-7040, to conversations conducted on this party line. At this time and place affiant Horner heard the following conversation between a male voice which he recognized and identified as that of Clyde Lee and a second male voice belonging to a person referred to as Honey:

Unidentified Male Voice: Hello.
Lee: 697—Listen, is Honey there? Let me talk to him, please.
Honey: Hello.
Lee: Hello, Honey.
Honey: How are you doing?
Lee: Okay, 697.
Honey: 697.

Lee: Unha. Listen, that MDL, tell that woman we don't want no more business from her. Just cut her off on the weekends and all just cut her off period. Just tell her we do not want no more. That woman was over $150.00 short the last two weeks. She was $150.00 short. She don't send no money at all any more. She sends you $50.00 worth of business and $2.00, and just tell her to quit. We do not want nothing from her. Cuber, bond, day house, or nothing.

Unidentified Male Voice: Let's see, 478.
Lee: Yes, no no, 697.
Honey: Oh, 697.
Lee: 697.
Honey: Oh, okay.

Lee: Okay, Honey, talk to you later.

That on several occasions between August 2, 1963 and August 9, 1963, affiant Francis E. Merrick personally observed Clyde Lee driving a 1963 white Chevrolet sedan east on Manor Road, Maitland, Orange County, Florida, and turn into the driveway of a one story, concrete block dwelling house located at 411 Manor Road, Maitland, Orange County, Florida, which dwelling house was located on the north side of Manor Road, facing south, and which dwelling house was on the northeast corner of the intersection of Manor Road and Live Oak Street; said dwelling house being painted white with brown trim.

That on August 9, 1963 at the business offices of the Winter Park Telephone Company in Winter Park, Florida, affiant John R. Bachman personally examined the records of the Winter Park Telephone Company, pertaining to that company's telephone numbered 644-7040 which records reflect that said telephone is located at 221 Manor Road, Maitland, Orange County, Florida, Said records further reflect that the telephone number 644-7040 is connected by a party line to a telephone of the Winter Park Telephone Company bearing number 644-3780 which telephone has been located continuously since July 19, 1963, up to the

present time at 411 Manor Road, Maitland, Orange County, Florida.

That affiant Herbert Horner has personally spoken with Clyde Lee and can recognize and identify the voice of Clyde Lee. That at approximately 8:53 a.m. on August 10, 1963, affiant Horner was in a dwelling house located at 221 Manor Road, Maitland, Orange County, Florida, listening on a telephone located in said dwelling house, which telephone was numbered 644-7040, to conversations conducted on this party line on an incoming call. At this time and place affiant Horner heard the following conversation between a male voice which he recognized and identified as that of Clyde Lee and a second male voice:

Unidentified Male voice: I've got some of Bobo's stuff here.

Lee: Call it out to me.

Voice: I've got to get it.

(long pause)

Voice:
70—$50.00
11— 75.00
13— 25.00
10— 25.00
100—25.00
27— 50.00
72— 50.00
16— 50.00
42— 50.00
86— 50.00
70— 50.00
25— 50.00
72— 10.00
72— 10.00
32— 10.00
78— 10.00
84— 10.00

25— 10.00
29— 5.00
27— 5.00
94— 1.00
84— 3.50
22— 1.00
41—50¢
15— 3.00
97— 2.00
32— 2.00
68—25¢
86—25¢
38—25¢
47—25¢
79— 2.25¢
97—25¢
07—25¢
09—25¢
10— 1.75
16—50¢
25—25¢
38—25¢
100—25¢
05— 1.00
27— 1.00
64— 10.00
33—30¢
27—30¢
37—30¢
62—30¢
23—30¢

That's it.

Lee: O.K.

Affiant James Goode states that he is a lieutenant with the Orlando, Orange County, Florida, Police Department and has been a member of this Police Department for more than twelve

years. That as a police officer he has participated in investigations involving violations of the laws of Florida prohibiting lottery, and has testified as an expert on lottery in State and Federal courts. Affiant Goode knows and recognizes Clyde Lee as a convicted lottery man, and has personally observed Clyde Lee in a lottery check-up house on several occasions. Affiant Goode recognizes the words "Cuba", "Bond", and "Dayhouse" as the names of lotteries conducted in Central Florida. Affiant Goode believes that the incoming call overheard by Herbert Horner at approximately 8:53 a.m. on August 10, 1963, and described above, was a report of lottery bets connected with a lottery known as "Bolita" or "Cuba."

And it appears to the Court that affiants are reputable citizens of Orange County, State of Florida, and that the facts set forth in said affidavits show and constitute probable cause for the issuance of this search warrant and the Court being satisfied of the existence of said grounds set forth in said application, or that there is probable cause to believe in their existence.

NOW, THEREFORE, you, or either of you, are hereby commanded in the name of the State of Florida, in the daytime or in the nighttime or on Sunday, to enter said premises located in Orange County, Florida, to-wit:

> A one story, concrete block dwelling house located at 411 Manor Road, Maitland, Orange County, Florida, which dwelling house is located on the north side of Manor Road, facing south, and which dwelling house is on the northeast corner of the intersection of Manor Road and Live Oak Street, said dwelling house is painted white with brown trim,

and if lottery tickets, records, implements, devices, or paraphernalia used for the purpose of promoting and conducting a lottery, or any part thereof, shall be found on said premises, then you are authorized and commanded to seize and safely keep the same in your possession to be disposed of according to law, and

to forthwith make return of your doings in the premises upon executing this warrant, which you are hereby commanded to execute as the law directs within ten (10) days from the date hereof.

You are further commanded, in the event that you seize any of the said property hereinbefore described, to make up, at the time and place of seizure, a full, true and itemized list and inventory of all things seized and taken, in duplicate, signed by you, and to then and there give and deliver one of said duplicate copies thereof to the person from whom possession shall be taken, if taken from the possession of anyone, together with a duplicate copy of this search warrant, and if not taken from the possession of anyone, then to any persons in charge of said premises, and in the absence of any such person, to leave the same on the premises.

WITNESS my hand and seal this 10th day of August A.D. 1963.

s/s FRANK A. SMITH
CIRCUIT JUDGE, NINTH JUDICIAL CIRCUIT
ORANGE COUNTY, FLORIDA

INVENTORY AND RECEIPT OF PROPERTY SEIZED UNDER THE WITHIN SEARCH WARRANT

A/ Taken from person of Clyde Lee in Living Room of 411 Manor Road. (1) Knife (2) Three keys in brown key case (3) Black Case with $1400.00 & Drivers License & other papers (4) $310.00 in one fold w/ rubber band (5) $138.00 in one fold w/ rubber band (6) Key to back door of 411 Manor Rd. (7) $.25 in coin.

B/ Taken from Bedroom in North-West corner of 411 Manor Road. (1) One brown leather briefcase containing lewd books & photographs, & other papers (2) Misc. papers & tax records (3) One paper bag containing coins.

C/ Taken from living room table @ 411 Manor Road. (1) Papers with phone numbers & telephone bill to Jack Martin. (2) One RCA Victor Strato-World radio.

D/ Taken from Kitchen Utility room in South East corner of Kitchen at 411 Manor Rd. (1) Clary adding machine (electric) SN169-283563-A (2) Electric Remington adding machine SN 169501394A (3) Electric Remington adding machine SN (This machine found in Dining area off Kitchen) also with machine—paper clips, stapler, & staples.

E/ Taken from Kitchen at 411 Manor Rd. (1) One red leather Camera case containing $510.00 in Currency. (2) Tapes & papers found in trash box. (3) Cardboard box found in Kitchen cabinet drawer containing coin wrappers, pencils, etc. (4) Paper bag containing Eight (8) lined pads. (5) Paper bag containing yellow lined pad.

This 10th day of August, A.D. 1963 s/s B. G. Lanner, Officer.

RETURN

STATE OF FLORIDA
COUNTY OF ORANGE

Received the within search warrant on the 10th day of August A.D. 1963, and executed the same in Orange County, Florida, on the 10th day of August A.D. 1963, by searching the premises described herein, and by taking into my custody and possession the property described above in the inventory and Receipt of Property Seized.

I further executed the said warrant by delivering a duplicate copy of this warrant to Clyde Franklin Lee and by making and delivering to the said Clyde Franklin Lee a true inventory of the property seized.

R. F. Tanner
Officer

I, R. F. Tanner, the officer by whom the foregoing warrant was executed, do swear that the above inventory contains a true and detailed account of all property taken by me on said warrant.

R. F. Tanner
Officer

Sworn to and subscribed before me
this 13 day of August
A.D. 1963.
s/s Lyda W. Roberson
Notary Public

A TRUE AND CORRECT COPY
ATTEST:
CHAS. E. LIMPUS, CLERK
BY: s/s N. Kinlaw C.D.C.

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1966

CLYDE FRANKLIN LEE,
GLEN DULEN BRECHEEN and
CECIL ST. CLAIR MERRITT,
Appellants,

CASE NO. 36.

v.

STATE OF FLORIDA,
Appellee.

Opinion filed September 21, 1966.

Appeal from the Criminal Court of
Record for Orange County;
Walter N. Burnside, Jr., Judge.

Edward R. Kirkland of Kirkland
Johnson Smith & Ervin, Orlando,
and William A. Harmening, Winter
Park, for appellants.

Earl Faircloth, Attorney General,
Tallahassee, and William D. Roth,
Assistant Attorney General, Lakeland,
for appellee.

FUSSELL, CARROLL W., Associate Judge.

Defendants appeal from their conviction for a violation of

the lottery laws. Their principal contention is that the lower court committed an error in permitting taped recordings of a telephone conversation to be introduced into evidence at the trial. They maintain that these recordings were the result of wiretapping and are illegal and inadmissible in evidence.

The law on wiretapping in Florida was most thoroughly and clearly stated by Judge Carroll in Griffith v. State, Fla.App. 1959, 111 So.2d 282, which was later followed and re-affirmed in Barber v. State, Fla.App.1965, 172 So.2d 857. Certiorari was denied by the Supreme Court in each of these two cases.

In the Griffith case, supra, the court observed that under the common law and general rule wiretapped evidence was admissible, and that, in order to change this rule, either a state or federal statute would be required or there must be a state or federal constitutional inhibition or the court must determine that wiretapping was in violation of the general principle of law.

In the Griffith case, supra, it was further determined that there were no state or federal statutes applicable in Florida which would make wiretapping illegal and inadmissible in evidence, but that wiretapping is illegal in Florida because it does violate Section 12 of the Declaration of Rights of the Florida Constitution, which provides:

> "Section 12 . . . No person shall be . . . compelled in any criminal case to be a witness against himself. . . ."

and also violated Section 22 of the Declaration of Rights of the Florida Constitution, which provides:

> "Section 22 . . . The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated. . . ."

The first case in Florida dealing with this subject was Perez v. State, Fla.1955, 81 So.2d 201, decided by the Supreme Court of Florida. In this case an informant purchased a lottery ticket over the telephone while an officer listened over an extension phone. The court held that this was sufficient as a basis for the officer to make his application for a search warrant.

The next case was Williams v. State, Fla.App.1959, 109 So.2d 379, decided by the Second District Court of Appeal. In this case the sheriff rented a party line and the deputy sheriff listened and recorded the conversations of the defendant thereon. The defendant had been told that the party line was being rented by a colored family, and the defendant did not know that the sheriff had rented the line. Recorded evidence of these conversations was held admissible.

The next case was the Griffith case, supra, decided by the First District Court of Appeal. In this case the officer rented a party line and then fixed it so that he could attach a long line to it and walk around the room without standing by the telephone at all times. Under this arrangement there was no tapping sound which would give alarm to the defendant that his conversation was being listened to. This was held not to be an illegal wiretap, and the officer was permitted to testify.

The last case, Barber v. State, Fla.App.1965, 172 So.2d 857, was also decided by the First District Court of Appeal. In this case a tape recording of a telephone conversation of the defendant with the prosecuting witness was admitted in evidence over the objection of the defendant that it was the result of wiretapping. The prosecuting witness had told the prosecuting officers of prior conversations with the defendant and consented to their making recordings of this conversation by means of wires attached by the deputy sheriff to the prosecuting witness' telephone receiver. The recording was made without the defendant's knowledge or consent. The court held that this was not the result of wiretapping and was admissible in evidence.

The facts in the instant case differ only from the above cases in that defendants contend that the telephone company itself knew of the plan of the enforcement officers and arranged and assisted them in the preliminary stages toward making the recordings. The facts in the instant case show that the defendants requested a private line telephone, but were informed by the telephone company that no private line was then available and that they could obtain service only through a party line. The

police department then arranged with the telephone company to have a telephone installed on the same party line. An automatic actuator and a tape recorder were attached to the telephone on the party line and recordings were made over a period of some eight days of conversations of the defendants on their telephone on the same party line. The recordings of these conversations were admitted in evidence.

There appear to be no material distinguishing facts in the Williams, Griffith and Barber cases, above cited, from those in the instant case, and it is this court's opinion that these cases are controlling.

The appellants seek to obtain solace in the able dissenting opinion of Judge Rawls in the Barber case, supra. However, it is the duty of the courts to finally determine and to settle close legal questions, even though as often is the case, there are able conflicting views. The Florida courts have held, and rightly so in our opinion, that recordings of telephone conversations made with the consent of one of the parties to the conversation, either over a direct line or by extension, are legal and properly admissible in evidence. Also, that recordings made over a party line, where the conversant must or should know that his conversation can be heard over any of the other party lines, where there has been no direct tapping or invasion of the lines belonging exclusively to the defendant, then recordings made through the party lines are not illegal and are admissible in evidence.

Defendants in this case further object to the introduction in evidence of certain personal property items obtained as results of the search of a residence. It is the contention of the defendants that the search was not executed in accordance with the law. Appellee contends that this objection comes too late as there was no motion to suppress prior to the trial and that it cannot now be raised on appeal, citing in support thereof Robertson v. State, 1927, 94 Fla.770, 114 So. 534, and Moffett v. State, Fla.App. 1965, 179 So.2d 408. It does not appear, however, that these cases were called to the attention of the lower court and certain articles of personal property were first admitted in evidence.

However, the court later reversed this ruling and excluded these articles from evidence and instructed the jury to disregard hem.

It is, therefore, our opinion that under these facts no harmful error has occurred, and the judgment appealed is affirmed.

SMITH, C. J., WALDEN, J., concur.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

STATE OF FLORIDA
VS.
CLYDE FRANKLIN LEE alias J. MARTIN, alias JACK MARTIN,

CASE No. 96864
CHARGE: COUNT ONE: CONSPIRACY

Now on this day came in person the Defendant Clyde Franklin Lee in open Court, and having been asked by the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Clyde Franklin Lee, having been tried and convicted at this term of court to the crime of Conspiracy as charged in the first Count ..... of the Information, the Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgement, order and sentence of the Court that you, Clyde Franklin Lee, for the crime of which you have been and stand convicted, as charged in the first Count ..... of the Information, be imprisoned by confinement at hard labor for ONE (1) YEAR in the state Penitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the

above is a true and correct copy of Judgment and Sentence imposed upon CLYDE FRANKLIN LEE, in Case No. 96864, as recorded in Minute Book No. 2, Page 5, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., A.D., 19.....

CHAS. E. LIMPUS, Clerk of
Criminal Court of Record

By: ..... D.C.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

STATE OF FLORIDA
VS.
CLYDE FRANKLIN LEE alias
J. MARTIN, alias JACK
MARTIN,

CASE No. 96864
CHARGE: COUNT FIVE:
VIOLATION OF LOTTERY LAW

Now on this day came in person the Defendant Clyde Franklin Lee in open Court, and having been asked by the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Clyde Franklin Lee, having been tried and convicted at this term of court to the crime of Violation of Lottery Law as charged in the fifth Count ..... of the Information, the Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgement, order and sentence of the Court that you, Clyde Franklin Lee, for the crime of which you have been and stand convicted as charged in the fifth Count ..... of the Information, be imprisoned by confinement at hard labor for FIVE (5) YEARS in the state Penitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the above is a true and correct copy of Judgment and Sentence imposed upon CLYDE FRANKLIN LEE, in Case No. 96864, as recorded in Minute Book No. 2, Page 5, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., A.D., 19.....

CHAS. E. LIMPUS, Clerk of
Criminal Court of Record

By: ..... D.C.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

STATE OF FLORIDA
VS.
CECIL ST. CLAIR MERRITT

CASE No. 96864
CHARGE: COUNT ONE:
CONSPIRACY

Now on this day came in person the Defendant Cecil St. Clair Merritt in open Court, and having been asked by the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Cecil St. Clair Merritt, having been tried and convicted at this term of court to the crime of Conspiracy as charged in the first Count ..... of the Information, the Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgement, order and sentence of the Court that you, Cecil St. Clair Merritt, for the crime of which you have been and stand convicted, as charged in the first Count .....

of the Information, be imprisoned by confinement at hard labor for ONE (1) YEAR in the state Penitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the above is a true and correct copy of Judgment and Sentence imposed upon CECIL ST. CLAIR MERRITT, in Case No. 96864, as recorded in Minute Book No. 2, Page 5 and 6, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., A.D., 19.....

CHAS. E. LIMPUS, Clerk of
Criminal Court of Record

By: ..... D.C.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

STATE OF FLORIDA
VS.
CECILS T .CLAIR MERRITT

CASE No. 96864
CHARGE: COUNT FIVE:
VIOLATION OF LOTTERY LAW

Now on this day came in person the Defendant Cecil St. Clair Merritt in open Court, and having been asked by the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Cecil St. Clair Merritt, having been tried and convicted at this term of court to the crime of Violation of Lottery Law as charged in the fifth Count ..... of the Information, the Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgement, order and sentence of the Court that you, Cecil St. Clair Merritt, for the crime of which

you have been and stand convicted, as charged in the fifth Count ..... of the Information, be imprisoned by confinement at hard labor for THREE (3) YEARS in the state Pentitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the above is a true and correct copy of Judgment and Sentence imposed upon CECIL ST. CLAIR MERRITT, in Case No. 96864, as recorded in Minute Book No. 2, Page 5 and 6, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., A.D., 19.....

CHAS. E. LIMPUS, Clerk of
Criminal Court of Record

By: ..... D.C.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

STATE OF FLORIDA
VS.
GLEN DULIN BRECHEEN

CASE No. 96864
CHARGE: COUNT ONE:
CONSPIRACY

Now on this day came in person the Defendant Glen Dulin Brecheen in open Court, and having been asked by the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Glen Dulin Brecheen, having been tried and convicted at this term of court to the crime of Conspiracy as charged in the first Count ..... of the Information, the Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgement, order and sentence of the

Court that you, Glen Dulin Brecheen, for the crime of which you have been and stand convicted, as charged in the first Count ..... of the Information, be imprisoned by confinement at hard labor for ONE (1) YEAR in the state Penitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the above is a true and correct copy of Judgment and Sentence imposed upon GLEN DULIN BRECHEEN, in Case No. 96864, as recorded in Minute Book No. 2, Page 5 and 6, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., A.D., 19.....

CHAS. E. LIMPUS, Clerk of
Criminal Court of Record

By: ..... D.C.

CERTIFIED COPY OF JUDGMENT AND SENTENCE OR ORDER OF ESTREATURE

STATE OF FLORIDA
VS.
GLEN DULIN BRECHEEN

CASE No. 96864
CHARGE: COUNT FIVE:
VIOLATION OF LOTTERY LAW

Now on this day came in person the Defendant Glen Dulin Brecheen in open Court, and having been asked by the Court whether he had any cause to show why sentence of the law should not be pronounced upon him, says nothing.

You, Glen Dulin Brecheen, having been tried and convicted at this term of court to the crime of Violation of Lottery Law as charged in the fifth Count ..... of the Information, the Court adjudges you to be Guilty of said crime, as charged in said Count ..... of the Information.

It is, therefore, the judgement, order and sentence of the Court that you, Glen Dulin Brecheen, for the crime of which you have been and stand convicted, as charged in the fifth Count ..... of the Information, be imprisoned by confinement at hard labor for THREE (3) YEARS in the state Penitentiary.

I, CHAS. E. LIMPUS, Clerk of the Criminal Court of Record in and for Orange County, Florida, do hereby certify that the above is a true and correct copy of Judgment and Sentence imposed upon GLEN DULIN BRECHEEN, in Case No. 96864, as recorded in Minute Book No. 2, Page 5 and 6, on July 21st, A.D., 1964.

WITNESS my hand and official seal this ..... day of ....., AD., 19.....

CHAS. E. LIMPUS, Clerk of
Criminal Court of Record

By: ..... D.C.